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10/053,292	01/23/2002	Michael J. Dove		5818

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EXAMINER

WILLIAMS, MARK A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/053,292

Filing Date: 1/23/02

Appellant(s): MICHAEL J. DOVE

MICHAEL J. DOVE

As Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/23/06 appealing from the Office action mailed 9/9/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

Under section (v) of the brief, the first paragraph deals with claim 5; the second paragraph deals with claim 9; the third paragraph deals with claim 13.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2,712,950	Siebert	7-1955
US 6,557,572	Lah	5-2003
US 5,779,386	Eichhorn	7-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, “the extension pole is formed with the cap of the second pole segment formed without removal of the cap” is not understood in the context of the claimed invention. This appears to be a method step of actual formation of the cap, as oppose to a structural limitation.

In claim 13, “the extension pole is formed with the cap of the last pole segment added formed without removal of the cap...” is not understood in the context of the claimed invention. This appears to be a method step of actual formation of the cap, as oppose to a structural limitation. In addition, this language is grammatically unclear.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6, 8-10, 12-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siebert, US Patent 2,712,950 in view of Lah, US Patent 6,557,572. Siebert provides successively joined pole segments (5, 8, 9), each segment being substantially identical. Each segment comprising first 10 and second tube portions 11 (see figure 2). The first tube portion of a first pole segment is received into the second tube portion of a second pole segments, as claimed. A locking mechanism (19, 20, 15, 16) is provide to lock the segments together. The second tube portion is of reduced length.

Siebert provides the claimed invention except for explicit teaching of a resilient cap insert, compressibly mounted, as claimed. Lah provides such a cap 90. One purpose of Lah's cap is to provide a buffering piece that would prevent damage to other pole segments. It would have been obvious at the time the invention was made for one skilled in the art to have included in the design of

Siebert such a modification, for the purpose of providing a buffering structure that would prevent damage to other pole elements (see Lah, column 4, lines 33-37).

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Siebert in view of Lah. Regarding the particular lengths of the pole segments, it would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such a modification would have produced no unexpected results and is not critical to the design. Further, the examiner contends that it is within the level of one having ordinary skill in the art make the sections of a length to accommodate the intended use of the device.

5. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seibert in view of Lah and in further view of Eichhorn, US Patent 5,779,386. Although the particular claimed locking mechanism arrangement is not explicitly provided by the combination, such arrangements are old and well known in the art of tubular connections. Eichhorn teaches such an arrangement that is considered

mechanically equivalent to the claimed arrangement. It would have been obvious at the time the invention was made for one skilled in the art to have included such a modification in the combination, such as that taught by Eichhorn, for the purpose of providing an alternative arrangement that would have functioned equally as well.

(10) Response to Argument

Applicant argues that the 35 USC 112 rejections are improper and that the claims are clear. However, it is still the position of the examiner that such language as pointed out in the above 112 rejection is unclear and not fully understood. In claims 9 and 13, the claim language appears to suggest a method step of actual formation of the cap, as opposed to a structural limitation. In addition, this language is grammatically unclear. Applicant has not clearly and distinctly claimed his invention. Further, in claim 9, the second end cap of the second pole section was not previously set forth in the claim language.

Applicant argues that the applied combination does not provide the particular sequence of insertion of the pole segments. Such claimed limitations at best are considered product-by-process limitations and thus do not structurally

limit the claimed invention (MPEP 2113). The resulting end product of the applied combination is structurally equivalent to that of the claimed invention.

Applicant argues that when reversing the end diameter of each pole segment with an end cap inserted into the dowel end, Siebert would have to redesign the connection assembly in order for the device to function properly. However, such an insertion of an end cap, as taught by Lah, is merely a plug into the opening of each pole segment, and minor changes to the plug design to accommodate the connection element 19 of Siebert would be an obvious change in shape. One skilled in the art would obviously know that such a change in the cap design could be easily done. Further, the scope of Siebert's design is not merely limited to the particular means of connection shown, but it would also be obvious to those skilled in the art that other means of connection could be used in which the groove 13 would not be necessary, such as that shown in Eichhorn. It is the position of the examiner that the combination is still proper.

Applicant argues that Siebert would require the removal of any protective end cap from Lah before the smaller end of the pole segment can be inserted into the larger end portion. The examiner disagrees, since as shown in figures 5 and 6 of Lah, the end cap is designed to fit comfortably within an adjacent pole segment while inserted. The end cap 90 of Siebert has no relevance to this type of assembly

since that end cap would only apply to the last pole segment within a change of segments.

Applicant argues contends that it is not necessarily the locking mechanism itself that is novel and unobvious, rather it is the combination and structural arrangement of those elements that are not disclosed, taught, or otherwise suggested by the prior art. However, as outlined in the applied rejection of claims 11 and 15, to include a locking member of the claimed type is an obvious modification to the design of Seibert, particularly in view of Eichhorn. Such arrangements of these types of locking devices in pole segments is well known in the art, and one skilled in the art would recognized that such a locking device could be used as an art recognized equivalent structure that would function at least equally as well.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully submitted,

Mark Williams



Conferees:

Brian Glessner *bb*



BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER

Daniel Stodola *DPS*